

Mental Health Law Reform 2008

Procedural Changes

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ECO Procedural Changes

- Evidentiary considerations
- Renewal
- Transfer of custody

ECO – Evidentiary Considerations

§ 37.2-808(A)

- Magistrate may consider
 - Recommendations of any treating or examining physician or psychologist
 - Past actions of the person
 - Past mental health treatment
 - Relevant hearsay
 - Any medical records available
 - Affidavits if the witness is unavailable and the affidavit so states
 - Any other relevant information

ECO – Renewal

§ 37.2-808

- ECO renewal can be requested by
 - Family member
 - CSB
 - Treating physician
 - Law enforcement officer

ECO Renewal (cont'd)

- Magistrate may renew ECO one time for a second period of up to 2 hours if magistrate finds good cause exists to grant the extension
 - Good cause includes the need for additional time to allow
 - CSB to identify a facility of temporary detention
 - Medical evaluation

ECO – Custody Transfer

HB401/SB81 - § 37.2-808

- Law enforcement may transfer custody to facility or location if facility is:
 - Licensed to provide level of security necessary to protect person and others from harm
 - Is actually capable of providing that security; and
 - Has entered into an MOU with law enforcement setting forth terms and conditions under which it will accept custody transfer – no fee may be charged to law enforcement

TDO Procedural Changes

- Electronic evaluation
- CSB notice that person not subject to TDO
- Evidentiary considerations
- TDO duration

TDO – Electronic Evaluation

§ 37.2-809(B)

- CSB evaluation conducted
 - In-person or
 - By two-way electronic video and audio communication system
 - Persons communicating must simultaneously see and speak to one another
 - Signal transmission must be live, real time
 - Signal transmission must be secure from interception through lawful means by anyone other than persons communicating

TDO – CSB Notice

§ 37.2-809(K)

- If CSB employee or designee performing the evaluation recommends against a TDO, he must inform the
 - Petitioner and
 - On-site treating physician

TDO – Evidentiary Considerations

§ 37.2-809(C)

- Magistrate may consider
 - Recommendations of any treating or examining physician or psychologist
 - Past actions of the person
 - Past mental health treatment
 - Relevant hearsay
 - Any medical records available
 - Affidavits if the witness is unavailable and the affidavit so states
 - Any other relevant information

TDO – Duration

§ 37.2-809(H) and -814(A)

- TDO duration shall be sufficient to allow for
 - Completion of the independent examination
 - Completion of the preadmission screening report
 - Initiation of treatment to stabilize person's psychiatric condition to avoid involuntary commitment where possible
- Shall not exceed 48 hours or until close of business on next day that is not Sat., Sun., or holiday

Independent Examination Changes

- Qualifications of examiner
- Requirements of examination

Independent Examiner – Qualifications

§ 37.2-815(A)

- Psychiatrist or Psychologist licensed in Va. and qualified in diagnosis of mental illness
- If not available:
 - Licensed clinical social worker
 - Licensed professional counselor
 - Psychiatric nurse practitioner
 - Clinical nurse specialist

Independent Examiner – Qualifications (cont'd)

- LCSW, LPC, psychiatric nurse practitioner, or clinical nurse specialist must:
 - Be qualified in assessment of mental illness
 - Complete a certification program approved by DMHMRSAS
 - Note: Psychiatrist or psychologist NOT required to complete certification program.

Independent Examination Requirements

§ 37.2-815(B)

- Comprehensive evaluation conducted in-person
- If not practicable, by two-way electronic video and audio communication system
- Translation or interpreter services shall be provided where necessary

Independent Examination Requirements (cont'd)

- Clinical assessment that includes
 - Mental status exam
 - Determination of current use of psychotropic and other meds
 - Medical and psychiatric history
 - Substance use, abuse, or dependency determination
 - Determination of whether person meets second prong of commitment criteria

Independent Examination Requirements (cont'd)

- Substance abuse screening when indicated
- Risk assessment that includes an evaluation of whether the person meets the first prong of the commitment criteria
- Assessment of person's capacity to consent to treatment including his ability to
 - maintain and communicate choice
 - understand relevant information
 - comprehend the situation and its consequences

Independent Examination Requirements (cont'd)

- Review of temporary detention facility's records including
 - Treating physician's evaluation
 - Any collateral information
 - Lab or toxicology test results
 - All admission forms and nurses' notes
- Discussion of treatment preferences expressed by the person or contained in a document provided by the person in support of recovery (e.g. WRAP plan)

Independent Examination Requirements (cont'd)

- Assessment of alternatives to involuntary inpatient treatment
- Recommendations for the placement, care, and treatment of the person

Independent Examination Requirements (cont'd)

- Written report must be provided prior to hearing
- Written report may be accepted into evidence unless objected to by person or his attorney
- If objected to, examiner must attend in-person or by electronic communication

Hearing Procedural Changes

- Attendance
 - CSB
 - Independent examiner and treating physician
- Firearm advisement
- Evidentiary considerations
- Removal of IE positive certification requirement
- Duration of inpatient treatment

Hearing – CSB Attendance

§ 37.2-817(B)

- CSB that prepared the preadmission screening report must attend the hearing in person or if not practicable, through a two-way electronic video and audio or telephonic communication system
- Court must provide time and location of hearing at least 12 hours prior to hearing
 - If CSB to be present by telephonic means, court to provide telephone number

Hearing – CSB Attendance (cont'd)

- If hearing is held outside of the service area of the CSB that prepared the preadmission screening report and it is not practicable for that Board to attend, the Board must arrange for the CSB serving the area where the hearing is held to attend or participate on its behalf
 - Board that prepared preadmission screening report remains responsible for person
 - Prior to hearing the screening Board shall send preadmission screening report to CSB attending hearing
 - Shall be sent by certified mail, personal delivery, facsimile with return receipt acknowledged, or other electronic means

Hearing – CSB Attendance (cont'd)

- Attending CSB shall inform the screening CSB of the disposition at the conclusion of the hearing.
- Attending CSB shall transmit the disposition through certified mail, personal delivery, facsimile with return receipt acknowledged, or other electronic means

Hearing – IE and Treating Physician Attendance (§ 37.2-817(A))

- Independent examiner, if not physically present at the hearing*, and the treating physician at the temporary detention facility shall be available whenever possible for questioning during the hearing through a two-way electronic video and audio or telephonic communication system

* Remember – if objection is made to IE report, the IE must attend in person or by electronic means

Hearing – Firearm Advisement

§ 37.2-814(B)

- At the commencement of the hearing, when the judge or special justice informs the person of his right to apply for voluntary treatment, judge or special justice must also advise the person that if he chooses voluntary admission he will be prohibited from possessing or purchasing a firearm under § 18.2-308.1:3
 - HB815/SB216

Hearing – Evidentiary Considerations

§ 37.2-817(C), (D)

- Recommendations of any treating physician or psychologist licensed in Va
- Past actions of the person
- Past mental health treatment
- Independent examiner's certification
- Any health records available
- Preadmission screening report
- Any other relevant evidence admitted

Hearing – IE Certification

§ 37.2-817(C), (D)

- Judge or special justice must still consider the IE's certification but law no longer requires positive certification
 - Judge or special justice can order involuntary treatment based on totality of the evidence even if IE determines that person does not meet commitment criteria.

Hearing – Duration of Inpatient Treatment § 37.2-817(C)

- Shall not exceed 30 days
- Subsequent orders not to exceed 180 days

Other Changes

- New Definitions (§ 37.2-800)
 - Responsible person includes a family member, CSB, any treating physician, or a law enforcement officer
 - The term “community services board” or “board” includes “behavioral health authority”

Other Changes

- HB707 – Execution of TDO: person shall remain in law enforcement custody until detained in secure facility or custody accepted by appropriate personnel at TDO facility
- HB1323 – Specifies that treating physician may petition to obtain TDO